

Governor Ehrlich's

Legislative Initiatives

Governor Ehrlich's Legislative Initiatives

2004 Session of the Maryland General Assembly

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Chesapeake Bay Initiatives

Chesapeake Bay Watershed Restoration Fund

The Chesapeake Bay Watershed Restoration Fund will create a dedicated fund to upgrade the 66 largest sewage treatment plants, located in 23 jurisdictions around the State, to achieve state-of-the-art nutrient removal. An environmental surcharge will be set at \$2.50 per month per household; a surcharge on businesses will be based on the wastewater they generate (\$2.50 per month for every 250 gallons per day of discharge).

The Fund, which will be administered by the Department of the Environment (MDE), will support state revenue bonds that will provide the estimated \$750 million to \$1 billion needed to complete the necessary upgrades.

The upgrades of the 66 major sewage treatment plants will reduce the nitrogen loading to the Bay and its tributaries by 7.5 million pounds per year, approximately 1/3 of the additional reduction needed for Maryland to meet its commitments under the 2000 Bay Agreement.

MDE will prioritize plants to be upgraded based on their ability to achieve the largest nutrient reductions to the Bay and its tributaries. These plants will be required to upgrade to "enhanced nutrient removal" (ENR).

Design and construction of the upgrades for the first plants can begin as soon as 2005. Design and construction of additional plant upgrades will be phased in each year, and construction of all 66 major sewage treatment plants can be initiated by 2009 and completed by 2011.

Once the 66 major plants have been completed, surplus in the Fund and the future revenue stream will be available to finance upgrades of the State's smaller sewage treatment plants where it is cost-effective to do so.

Up to 10% of the Fund, about \$6.6 million annually, will be allocated to wastewater utilities to help offset the added operation and maintenance costs that result from upgrading plants from "biological nutrient removal" (BNR) to ENR levels.

Up to 3% of the Fund, about \$2 million per year, will be retained by the billing authorities to offset the cost of collection. Up to 1.5% of the surcharge, about \$1 million per year, will be allocated to MDE to cover financial management of the Fund and administrative costs of plant planning, design and construction.

The legislation also establishes an Advisory Committee charged with identifying additional sources of funding, making recommendations to improve the effectiveness of the Fund, modifying the surcharge fee as necessary to meet the financing needs of the Fund, and advising the Secretary of MDE concerning the adoption of regulations governing the management and use of the Fund.

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Chesapeake Bay Recovery Fund

The Chesapeake Bay Recovery Fund will enable the Department of Natural Resources (DNR) to enter into agreements with non-profit, public charities to solicit and manage private contributions for large-scale Bay restoration projects, such as oyster restoration, cover crops, and Bay grasses. Contributions will come from private investors, corporations, foundations, and individuals.

The Fund will encourage private investments by providing the following safeguards:

- A public charity will seek gifts for Bay restoration and handle the Fund's administrative functions to ensure investor confidence.
- The Governor will establish an advisory commission to develop and implement innovative fundraising projects for Bay restoration. Additionally, the commission will advise the Secretary of Natural Resources on the distribution of the Fund.
- The donations will be used only for Bay restoration projects and in accordance with investors' wishes.

The Department of Natural Resources will direct donations to identified Bay restoration projects. DNR will enter into partnerships with organizations having similar Bay restoration goals, such as the Chesapeake Bay Foundation, Conservation Fund, Audubon Society, and Ducks Unlimited.

The Fund will employ a wide variety of fundraising vehicles to involve corporations in project sponsorships as well as foundations and individuals in specific projects that are geared to large-scale restoration. Examples of fundraising opportunities include: concert events, sale of shares in the Bay, and partnerships with food and beverage industries.

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Chesapeake Bay Initiatives

Water Quality Improvement Act - Nutrient Management

Increase Farmer Participation and Eliminate Right-of-Entry

The Governor's bill eliminates the requirement that farmers sign a statement granting right of entry to their farms as part of the nutrient management plan submittal process. The right of entry provision is the single most contentious issue related to nutrient management and the Department of Agriculture (MDA) believes this elimination will encourage more farmers to participate in the program.

MDA will retain the ability to assess implementation of farmers' plans. The Governor's bill provides this authority while spelling out conditions under which access will occur, including 48-hour advance notice and scheduling convenient to the farmer. Monitoring the effectiveness of the entire program depends on MDA's ability to verify that recommendations in the plan are being followed. This verification may take place off-site or on the farm, depending on the type of operation.

Reduce Plan Submittal Paperwork

The Governor's bill reduces the amount of paperwork for farmers by allowing them to submit only a summary of their plans rather than specific components of their entire plans. These summaries will include cumulative information related to implementation of plans and will allow farmers to keep their plans on the farm.

Additionally, the bill changes the submission requirements to a "post-season" approach where a farmer reports certain summary information about his operation and plan implementation for the season just completed. Current requirements call for components of the plan to be submitted to MDA upon development and revision of the plan. A variety of changes in the farm operation may occur between the time the plan is developed and crop planting, requiring revisions of the existing plan and documentation of these changes. The changes in the Governor's bill will reduce the actual information submitted to MDA and eliminate concerns about mid-season adjustments requiring numerous plan updates and re-submittals.

Reduce Certification and Licensing Paperwork

The Governor's bill extends the renewal cycle for nutrient management consultants from one year to three years. This proposal will reduce administrative workload for consultants and MDA staff. The term of the first year of certification will remain one year, which keeps initial application fees at a lower level and minimizes costs to the consultant for initial certification. Subsequent renewals are for three years.

The fees for farmers who are certified to write their own plan will remain a one time expenditure and their renewal will be contingent upon meeting continuing education requirements.

Increase Flexibility

The Governor's bill authorizes MDA to approve scientifically validated data or technical standards other than those of the University of Maryland to develop nutrient management plans. This change will address situations in which the University of Maryland's standards have not been developed and fail to meet the needs of a specific crop or production system.

The bill authorizes MDA to develop a process to contract private sector nutrient management plan development services for certain amounts or types of acres using cost-share funds. This will make the planning process more efficient, reduce out-of-pocket costs to farmers, and make private sector service providers more competitive with Cooperative Extension's "free" services.

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Crime Prevention Initiatives

Crimes - Substance Abuse - Parole - Civil Commitment - Diversion

This bill provides the Parole Commission with drug and alcohol evaluations, which include recommendations on amenability to treatment and availability of appropriate identified program, for consideration in connection with parole decisions

Creates new structured diversion system for State's Attorney's use in non-violent offenses through "nolle prosequi for drug or alcohol treatment" or a "stet for drug or alcohol treatment"

- Defendant evaluated under Alcohol and Drug Abuse Administration (ADAA) regulations, determining amenability to treatment and recommending appropriate program
- Disposition will be entered in criminal or motor vehicle records
- Unless court finds indigence, defendant must pay administrative fee of \$150 into newly created Maryland Substance Abuse Fund - to be used by ADAA for local Drug and Alcohol Abuse Councils, any state costs incurred to coordinate planning by local Councils, and substance abuse evaluation and treatment services (including services provided through Drug Treatment Courts)

Amends existing law to promote direct access by courts to ADAA-funded local health systems providing substance abuse evaluation, referral and resources

- Elimination of "commitment" to DHMH for treatment and replacement with "order" for treatment through ADAA-funded local health system
- Evaluation of defendant in accordance with ADAA regulations.
- Identification of treatment program and actual/estimated date of admission
- Treatment can only be ordered as a condition of pretrial release or as a condition of probation AND there is no current commitment in effect
- Defendant must be supervised by either pre-trial release or probation agent

Creates an Alcohol and Drug Abuse Council in each county

- Members include local Health Dept., Board of Education, DSS, DJS, Parole and Probation, Circuit and District Court judges, local government, police, treatment providers
- No duplicative bureaucracy - Any appropriate, existing group can request Governor's designation as the county's Council
- Develops local plan for meeting needs of general public and criminal justice system for drug and alcohol evaluation, prevention and treatment services, including survey of funds already in use
- Reviews local grant applications and recommends approval if consistent with local plan

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Substance Abuse – continued

- No local application for funds for services can be approved by any state agency unless first submitted to Council for review
- ADAA provides technical assistance and Maryland Substance Abuse Fund allocations for Council operations
- Council must report by December 1, 2004 on interim organizational progress and submit a plan every two years beginning July 1, 2005, regarding the county's plans for fighting substance abuse (and report every 6 months to ADAA on implementation progress)

FY 2005 Budget Initiative TOTAL FUNDING FOR INITIATIVE: \$8.488 MILLION

DEPARTMENT OF JUVENILE SERVICES

\$588,000	Drug Courts
\$175,000	Substance Abuse Unit

DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

\$1,500,000	Additional therapeutic communities within institutions
\$300,000	Assessment and evaluation of inmates
\$100,000	Methadone Detoxification

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

\$3,982,560	Residential treatment in lieu of incarceration
\$1,842,440	Non-offender population request

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Crime Prevention Initiatives

Crimes and Criminal Procedure - Intimidation of Victims and Witnesses

Witness intimidation is a tremendous problem around the State, particularly in larger jurisdictions such as Baltimore City and Prince George's County. The result is that many crimes are not prosecuted or have to be dismissed because victims and witnesses are afraid to come to court to testify against the defendant.

This bill addresses the problem of witness intimidation by:

- Making it a crime to induce a victim or witness to not report a crime.
- Making it a crime to solicit another person to threaten, harm or damage property of a victim or witness.
- Adding a maximum fine of \$5,000 to the existing statutory maximum penalty of five years incarceration.
- Making it a felony with a maximum penalty of twenty years, if the crime for which the victim or witness would testify is a felony.
- Increasing the penalty for intimidating a juror, witness or officer of the court of the State or of the United States to twenty years and a felony if the proceeding involving the juror, witness or officer involves a felony or an attempt, conspiracy or solicitation to commit a felony.
- Adding witness intimidation to the list of crimes for which someone at least sixteen years old and younger than eighteen years old will be automatically charged as an adult, leaving open the option for the adult court to send the case back to the juvenile justice system.
- Allowing an out-of-court statement from a witness or victim to be used at trial, as an exception to the hearsay rule, against the party that intimidated or killed the witness or victim, or solicited another to have the witness or victim intimidated or killed, thereby making the witness or victim unavailable at the trial for the original crime.
- Providing that a sentence under this new law to be separate from the sentence for any crime based on the act establishing a violation of this section.

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Crimes - Victim & Witness Intimidation - Death Penalty

This bill addresses the problem of witness intimidation that results in death to the victim or witness. This bill adds to list of aggravators making first-degree murder of a victim or witness eligible for the death penalty.

As with all other aggravators for the death penalty, the State will still have to prove beyond a reasonable doubt that the defendant committed the murder while committing or attempting to commit a violation of the witness intimidation law.

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Health Care Initiatives

Maryland Medical Injury Compensation Reform Act

Governor Ehrlich is committed to lowering the costs and increasing the availability of health care in the State. Establishing reasonable limits on medical malpractice awards is one factor to ensure affordable, accessible, and quality health care in the State. The State is facing a crisis in the medical profession. For doctors, medical malpractice rates rose 28% this year, after rising 10% last year. Malpractice premiums for some State hospitals have risen even more dramatically. Some health care practitioners have already closed their practices, and there is the real possibility that more will do so, especially in high risk practices.

Governor Ehrlich has long been a supporter of reasonable tort reform measures, especially in the area of medical malpractice. He believes that wrongly injured patients deserve to be compensated for their injuries. He also recognizes, however, that the more money that is spent on malpractice claims and insurance premiums, the less there is to spend on health care. Governor Ehrlich is therefore proposing the following medical malpractice bill for this session.

- The medical malpractice bill allows a party defending against a medical malpractice claim to make an offer of judgment to the claimant. If the claimant does not accept the offer of judgment and at trial of the case the verdict is less favorable to the claimant than the offer of judgment, the claimant must pay the defending party the costs incurred from the time of the offer of judgment, including reasonable attorney's fees. This provision is modeled after Federal Rule of Civil Procedure 68 which was adopted in 1937.
- The bill reduces the cap on noneconomic damages in medical malpractice cases from \$635,000 with an annual \$15,000 escalator to a flat cap of \$500,000. Noneconomic damages serve to compensate an individual for pain, suffering, inconvenience, and other damages that, unlike damages for medical costs and lost wages, are not measurable in terms of money. In a wrongful death case, noneconomic damages compensate surviving family members for their mental anguish, emotional pain and suffering, loss of society, and other similar damages.
- The bill limits economic damages (typically medical bills and lost wages) as follows. First, for past medical bills the claimant may only be compensated for the amount actually paid by the claimant or on the claimant's behalf (e.g. by an insurance company or HMO), not for the amount billed. Typically, doctors and other health care providers accept less than the amount that they bill. Second, for the same reason, a claimant will be compensated for future medical costs at the current medicare rate for the service, adjusted for inflation. Thirdly, for both past and future lost wages, an award shall exclude any taxes the claimant would have paid. Tort judgments are not subject to taxation.
- If the amount of future economic damages and noneconomic damages total more than \$250,000, a claimant will be paid those damages, less \$100,000 to be paid immediately, through periodic payments. The periodic payments will be paid based either on the life expectancy of the claimant or the number of years that the claimant will require medical care or be disabled. In wrongful death cases, noneconomic damages will be paid at the same time as the past economic damages, and only future economic damages over \$250,000 will be subject to periodic payments.

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Health Care Initiatives

Federally Qualified Health Centers Grant Program

Governor Ehrlich recognizes the critical role that Federally Qualified Health Centers (FQHC) play in the medical care for medically underserved Marylanders. In Fiscal Year 2002, those FQHCs served 132,000 people, including the insured, uninsured, and Medicaid patients. Maryland has 54 medically underserved areas in the State, seven of which are entire counties. Governor Ehrlich is proposing legislation that establishes a capital bond program to expand and improve FQHCs in Maryland to improve the access and quality of care in Maryland.

- Federal goals are to add 1,200 new or expanded sites nationwide to improve access to quality health care to Americans in need.
- Maryland has thirteen FQHCs in over fifty locations.
- As of September 2003, Maryland was one of only fifteen states that did not provide any dedicated capital funding for FQHCs, and some of
- Maryland's FQHCs have significant capital needs.
- This legislation would provide up to 50% matching grant funds capped at \$500,000 for qualified FQHCs, thereby making Maryland more comparable with other states regarding the development of FQHC care for people in need.
- The Department of Health and Mental Hygiene would administer the FQHC Bond Program in a manner similar to the existing bond programs for adult day care and community facilities administering substance abuse treatment, mental health, and developmental disabilities program.
- The Governor has submitted a proposed capital budget of \$2.4 million for this program for Fiscal Year 2005 that will fund five projects in the first year of this program.

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Economic & Community Development Initiatives

Office of the Comptroller - Tax Compliance - Holding Companies

The Governor believes that corporations that do business in the State of Maryland should not be able to avoid taxation by shifting assets to an out-of-state holding company. This bill builds upon the recent court successes of the Comptroller and ensures that all corporations pay their fair share of Maryland taxes, by:

- Authorizes the Comptroller to distribute, apportion or allocate tax liability between and among two or more businesses or organizations that are related members, within the meaning of the bill.
- Requires that certain expenses related to intangible corporate property, such as patents, trade names, and copyrights, be added to the federal taxable income of a corporation to determine Maryland modified income under certain circumstances.
- Provides for a tax credit under certain circumstances to eliminate the possibility of double taxation under this bill.
- Establishes a schedule of estimated payments that will result in money being paid to the State by corporations during calendar year 2004.
- Provides a process whereby corporations can demonstrate to the Comptroller that their tax liability should be less because their dealings with a holding company involve arm's length transactions.
- Makes the law effective for all taxable years starting in calendar year 2004.

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Economic & Community Development Initiatives

Brownfields Redevelopment Reform Act

Enhanced Eligibility

The Governor's legislation expands the number of contaminated properties eligible for the Voluntary Cleanup Program (VCP) in the Department of the Environment (MDE), provides a more predictable cleanup process for prospective owners of eligible properties, reduces owners' costs associated with redevelopment, and decreases turnaround times. These efficiencies complement the administrative changes already made in MDE's brownfields program.

The Governor's legislation expedites cleanup and reuse of contaminated properties by allowing properties with oil contamination to enter the VCP. Currently, properties with oil contamination must be cleaned through a separate oil program.

The bill encourages cleanup of contaminated properties through the VCP by allowing an application to cover a portion of a property, known as "focused site cleanup," provided the entire property is investigated for contamination.

A property under active enforcement may participate in the VCP if the property is cleaned up to at least the level of the outstanding enforcement action and the VCP application is filed by an inculcable person. An inculcable person has no prior or current ownership interests in a property and did not contaminate that property.

Public Protections

The Governor's bill increases public notification of cleanups by requiring applicants to post notice of all applications on the property site and MDE to post notice on its web site. It also requires program participants to hold a public informational meeting for all approved cleanup plans.

Public safety is further protected by requiring persons receiving a no further requirements determination or a certificate of completion from the VCP to send this information to "Miss Utility" for recordation.

Predictability

The bill establishes: a "premier service" for \$2,000 that speeds up the determination of an applicant's inculcable status; a reduced application fee for VCP applications submitted subsequent to the first-time application; and a reduced fee for participants who demonstrate financial hardship. Under the Governor's legislation, property owners and developers benefit from the reduction of MDE's review times for applications.

MDE will provide an applicant with technical advice regarding whether and how to conduct an environmental sampling assessment of the property prior to the applicant conducting the testing. The legislation ensures protection of public health and the environment by requiring environmental sampling that MDE deems necessary.

Liability

The Governor's bill clarifies that a person who is not a "responsible person" because he meets one of the exclusions in the statute will now clearly be entitled to "inculcable person" status and accorded those benefits.

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Brownfields – continued

The legislation ensures liability protections granted to an applicant who completes a site cleanup will not be voided if a third party violates the use conditions and maintenance associated with the property.

Participants receiving a no further requirements notice from the VCP, which indicates that no additional cleanup is required, will receive protection from litigation initiated by a responsible person, as is the case when a property is cleaned up and receives a certificate of completion.

Funding

The legislation encourages participation in the VCP by broadening eligibility for grants and loans through the Brownfields Redevelopment Incentive Program in the Department of Business and Economic Development. This money will fund environmental site assessments and cleanups with newly eligible sites such as properties contaminated with oil.

Enforcement

While providing for a fair hearing process, the Governor's bill allows MDE to seek treble damages from parties who refuse to comply with a MDE order and fail to properly conduct remediation activities. This new authority will encourage compliance with MDE's environmental protection standards.

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Economic & Community Development Initiatives

Heritage Structure Rehabilitation Tax Credit Program

Last fall, Governor Ehrlich named seventeen individuals to the Task Force on the Heritage Structure Rehabilitation Tax Credit Program. The Task Force examined the seven-year legislative and administrative history of the Tax Credit Program in terms of its performance in promoting economic development through historic rehabilitations. This evaluation addressed whether the Tax Credit Program generated a revenue loss or gain to the State and, if so, to what extent; the direct and indirect economic benefits of the Program; and whether the Program could proceed under a direct grant program.

After consideration of available data on the Program's direct and indirect economic benefits to the State, the Task Force determined that projects receiving tax credits generally returned the State's investment of tax credits within one year. It was also determined that projects continued to generate revenue to the State and local governments well after the project was completed.

Based on the Task Force's recommendations, Governor Ehrlich is recommending the following amendments to the Heritage Structure Rehabilitation Tax Credit Program:

Program-wide:

- Establishes January 1, 2010 as program sunset date.
- Adopts changes recommended by the Comptroller regarding claiming of tax credits and audits.
- Authorizes the Director to charge fees for application reviews.
- Prohibits certifications for projects completed or substantially completed prior to application.

Commercial Projects:

- Creates annual tax credit cap of \$30 million for commercial projects.
- Creates time limit for completion and submittal of Request for Certification of Completed Rehabilitation (Part 3).
- Removes requirement that rehabilitations of multiple structures that are functionally related be viewed as one project.

Owner-occupied Residential Projects:

- Create a per-project tax credit cap of \$50,000 for owner-occupied residential projects.

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Other Administration Initiatives

Maryland Department of Disabilities

Governor Ehrlich's legislation elevates the Governor's Office for Individuals with Disabilities to a cabinet-level department charged with improving, coordinating, consolidating, and unifying Maryland state policy and resources regarding services to people with disabilities to ensure equal access and enjoyment of state resources by persons with disabilities that is comparable to citizens without disabilities.

The cornerstone principles of the new department direct units of State government to seek outcomes for individuals with disabilities to achieve maximum participation in the mainstream of community and lead to the provision of supports and services in the most integrated setting possible. The principles acknowledge that:

- People with disabilities can live independent, productive, and full lives in their communities when provided with the right supports, training, and opportunities.
- Supports and services intended for Marylanders with disabilities are best delivered in communities where people live, work, play, go to school, and prosper.
- Quality and sustainable outcomes occur best when individuals with disabilities are empowered to exercise informed choice and to direct supports that are individually tailored.

The new Department will direct the creation of a statewide Disability Implementation Plan across State government that will result in measurable outcomes for quality, quantity, and sustainability of outcomes over time.

- Each unit of government will be charged with assessing their progress in achieving their individual performance objectives along with measuring consumer satisfaction, gaps in services, and numbers waiting for services.
- The legislation also creates the Maryland Advisory Commission on Disabilities whose members are appointed by the Governor.
- The State Disability Implementation Plan will be implemented by the Disability Implementation Board convened by the Governor and consisting of the secretaries of relevant units of the executive branch.
- The legislation will continue programs such as the Assistive Technology Guaranteed Loan program, Maryland Technology Assistance Program (TAP) and Access Maryland. It will also create an enhanced Office for Disability Constituent Services and an Office of Research and Evaluation which will gather data, monitor state government practices, and facilitate and/or assist other units of state government to successfully apply for federal funding opportunities including grants and waivers.

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Other Administration Initiatives

Public Ethics - Judicial Review - Alteration of Stay of Enforcement of an Order

- This proposal is intended to alter the Public Ethics Law by eliminating the automatic stay upon the filing of an appeal of the sanction imposed by the Ethics Commission upon an individual following a finding by the Ethics Commission of a violation of the Public Ethics Law. Rather, this bill shifts the burden to the Respondent to seek a stay of sanction from either the Ethics Commission or the reviewing court.
- This measure will bring the Public Ethics Law more in line with normal administrative practice as reflected in the Administrative Procedure Act and should result in having these matters reach a final conclusion in a more reasonable period of time than is the case under the law as it presently exists. By providing an automatic stay of sanction, the present law maintains the status quo during the pendency of the appeal process and, therefore, removes any sense of urgency on the part of the Respondent to get a prompt appellate decision.